IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Letters Patent Appeal No.207 of 2007

Date of Decision: November 15, 2007

Bhanu Partap

...Appellant

VERSUS

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Dr.Surya Parkash, Advocate,
for the appellant.

*****

Bhanu Partap, an aspirant for being appointed as Sub Judge in Haryana, has filed this appeal against the order passed by the learned Single Judge dismissing his writ petition wherein he has impugned the order rejecting his claim for appointment to the post. He had also sought mandamus to the respondents for his

appointment as Subordinate Judge (HCS Judicial Branch).

The appellant was one of the three candidates, who had passed the written examination by obtaining 488 marks out of 900. He, however, could obtain only 20 marks in viva-voce and as such, failed to get appointment as he could not qualify in terms of Rule 8 of HCS (Judicial Branch) Rules. As per this rule, no candidate shall be considered to have qualified in the examination unless he obtains at least 50% marks in aggregate, which includes Viva-voce test. The appellant was denied appointment as he had obtained 49.8% in aggregate. His primary prayer in the writ petition was that the marks obtained be rounded off to make it 50%, it being a less by negligible fraction. In his support, the appellant has referred to the cases of ***Asha Mehta v. State of Punjab, 1993(3) SCT 237 and State of Punjab and another v. Asha Mehta, (1997) 11 SCC 410.*** In these cases, a view taken is that where a candidate is required to obtain 33% marks for passing and had obtained 32.5%, it could be taken as 33% and the candidate declared to have passed. Learned Single Judge, after noticing all the conditions, came to conclude that the appellant could not obtain 50% marks in aggregate and as such, could not be considered to have qualified for appointment to the post of a Judicial Officer and accordingly rejected his claim. That is how the appellant is in Letters Patent Appeal before us.

The learned counsel appearing for the appellant, by changing a stance a bit, would now urge that he did not get chance to make submission concerning the record which was called and perused by the learned Single Judge, as is seen from the impugned order. He also made an attempt to say that for the purpose of viva-

voce, the marks were to be awarded under four sub-heads, but the Interviewing Committee did not separately assess the appellant under these four sub-heads and as such the impugned order cannot be sustained in the eyes of law. In this regard, the counsel has referred to the case of ***Minor A.Periakaruppan v. State of T.N. and others, AIR 1971 Supreme Court 2303.***

We have heard the learned counsel for the appellant.

Obviously, the plea now raised by the counsel was neither raised nor was available to be raised by him before the learned Single Judge. The appellant was seeking writ of certiorari, which is a writ of record, and the learned Single Judge was justified in referring to record to reach a finding which he did. For a selection to the post of Sub Judge, a Judge of this court was associated as an Expert Advisor for conducting the viva-voce test, which was of 120 marks. 30 marks each were kept for each sub head for evaluating the persona quality of the candidate. As per the record, Expert member of the committee was required to classify each candidate as excellent, very good, good, above average, average and poor. Even different marks were assigned to these shades of the assessments as noted above. The record further shows that the appellant was assessed as poor and could be given marks varying 1 to 5. All the members accordingly gave 5 marks to the appellant in each of the qualities he was required to be assessed and his aggregate in viva-voce, thus, came to be 20 marks. No mention of any bias or malafide is alleged against any person. It has been rightly observed by the learned Single Judge that maximum marks which could be awarded to the appellant on being assessed as poor were given by

each member and still he could not qualify. No relaxation is either permissible or can be granted under the rules. We have to notice and keep in mind that appointment is to a post of a Judicial Officer and sympathy or other such considerations, that otherwise may be shown, cannot and should not be extended for appointment to such post.

We have also perused the judgment in the case of ***Minor A.Periakaruppan's case (supra)*** which would not help the case of the appellant in any manner. The main contention in this case was that separate marks had not been awarded for each one of the test enumerated in the rules and a total of 75 marks were placed at the disposal of the Selection Committee at the time of interview. In this case, the rule did not prescribe separate marks for separate heads. That situation does not arise in the present case. Here each head has been given separate marks and the candidate could be assessed with different marks by different members even if the assessment was in one class. For example, if the expert was to assess a particular candidate as excellent, then each member was at liberty to award marks to such candidates between 26 to 30. Thus, it is neither the case of leaving any arbitrary discretion with the members of the committee where they could assign marks whimsically to any candidate nor there is any fixed criteria with which they were bound to award particular marks to a candidate on the basis of assessment done by the expert present as a member of the Interviewing Committee. What had mainly weighed with the Supreme Court in the case of ***Minor A.Periakaruppan (supra)*** was that the Committee had neither divided the interview marks in various heads

nor were the marks given itemized basis. In our view, the judgment relied upon by the learned counsel would not apply to the facts of the present case. Even otherwise, we do not find any infirmity in the judgment of the learned Judgment and as such would dismiss this appeal in limine.

(VIJENDER JAIN)
CHIEF JUSTICE

November 15, 2007
ramesh

(RANJIT SINGH)
JUDGE